

# ARKANSAS SUPREME COURT

No. CR 08-1394

WILBERT L. JOHNSON  
Appellant

v.

STATE OF ARKANSAS  
Appellee

**Opinion Delivered** May 7, 2009

PRO SE MOTION TO COMPEL,  
MOTION FOR PRODUCTION OF  
DOCUMENTS AND “AMENDED”  
MOTION FOR COPY OF RECORD, TO  
STAY OR FOR EXTENSION OF TIME  
TO FILE APPELLANT’S BRIEF  
[CIRCUIT COURT OF PULASKI  
COUNTY, CR 2006-3233, HON.  
BARRY A. SIMS, JUDGE]

MOTION FOR PRODUCTION OF  
DOCUMENTS DENIED; MOTION TO  
COMPEL TREATED AS MOTION FOR  
WRIT OF CERTIORARI AND ACCESS  
GRANTED IN PART, DENIED IN  
PART AND HELD IN ABEYANCE IN  
PART; MOTION FOR COPY OF  
RECORD AND EXTENSION OF TIME  
MOOT IN PART AND HELD IN  
ABEYANCE IN PART.

## PER CURIAM

In 2008, appellant Wilbert L. Johnson entered negotiated pleas of guilty to theft by receiving, fleeing, and violation of the Omnibus DWI Act. After the judgment was entered, appellant lodged in this court an appeal of an order by the trial court denying a motion to withdraw appellant’s plea. The order indicated that the motion was filed on April 28, 2008.

Appellant previously filed motions in which he sought copies of the transcript and plea agreement and a copy of the record. We treated one of the motions as a motion for writ of certiorari

to bring up certain items and granted that motion in part and provided appellant access to the record. *Johnson v. State*, CR 08-1394 (Ark. Mar. 12, 2009) (per curiam).

Appellant has now filed a motion to compel in which he seeks to be granted access to a “plea agreement” or his plea statement, the information, and the motion to withdraw plea so that he can prepare his brief. Appellant has also filed a motion in which he seeks copies of the same documents at public expense under the Arkansas Freedom of Information Act, Arkansas Code Annotated §§ 25-19-101 – 25-19-109 (Repl. 2002 and Supp. 2007).<sup>1</sup> Later, appellant filed a motion in which he again requests the complete record on appeal, repeats his request for the same documents requested in the motion to compel, and also requests an extension of forty days in which to file his brief.

Appellant’s motion for copies under the Freedom of Information Act is not sufficient to grant his request. In that motion, appellant fails to identify any specific need for the documents he requests, only stating generally that the documents are necessary to assist him in gaining access to the court system as he seeks relief for an illegal sentence and that he is without funds to pay for photocopying.

Indigency alone does not entitle a petitioner to free photocopying. *Nooner v. State*, 352 Ark. 481, 101 S.W.3d 834 (2003) (per curiam). A petitioner is not entitled to a free copy of material on file with this court unless he or she demonstrates some compelling need for specific documentary evidence to support an allegation contained in a petition for postconviction relief. *Id.* The Freedom of Information Act does not require an appellate court to provide photocopying at public expense. *Moore v. State*, 324 Ark. 453, 921 S.W.2d 606 (1996) (per curiam). Because petitioner has not demonstrated a compelling need for the documents concerning any further actions that he may wish

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<sup>1</sup> Appellant mistakenly cites the federal statute.

to initiate, we deny the motion for production under the Freedom of Information Act.

As to appellant's motion to compel, appellant, who was provided with access to the record under our prior order, acknowledges that the items he seeks are not contained in the record. As before, we treat the motion as one for writ of certiorari and access. The motion to withdraw appellant's plea, which was the motion the appealed order denied, is undoubtedly relevant to the pending appeal. The other two items appellant asserts are relevant to an issue of which he states he became aware through review of the transcript of the plea hearing. He does not indicate that the issue was one raised in the motion to withdraw his plea. Moreover, the trial court's order dismissed the motion as an unverified petition under Arkansas Rule of Criminal Procedure 37.1, without indication as to the issues raised in the motion. It is not clear that the other items appellant requests are relevant to our review of the order denying postconviction relief.

We therefore grant the motion for writ of certiorari as to the motion to withdraw appellant's plea only and direct that a writ of certiorari be issued to the Pulaski County Circuit Court to complete and file a certified supplemental record containing any motion to withdraw appellant's plea filed as of April 28, 2008, with our clerk within fifteen days of the date of this order. As to appellant's remaining motion, he was previously granted access to the record and the request for the documents not contained in the record is substantially the same as in his motion to compel, which provides no further relevance of the documents as to issues presented in his motion to withdraw the plea. That portion of the motion is therefore moot. Once the writ is returned and any supplemental record received, we will consider appellant's request for access and for extension of time in which to file his brief.

Motion for production of documents denied; motion to compel treated as motion for writ of

certiorari and access granted in part, denied in part and held in abeyance in part; motion for copy of record and extension of time moot in part and held in abeyance in part.